88-1059

Supreme Court, U.S.
FILED
DEC 21 1988
JOSEPH E. SPANIOL, JR.
CLERK

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1988

VROOM DEVELOPMENTS (FLORIDA), INC., *Appellant*,

v.

TOWN OF LONGBOAT KEY, *Appellee*.

ON APPEAL FROM THE DISTRICT COURT OF APPEAL, SECOND DISTRICT, STATE OF FLORIDA

JURISDICTIONAL STATEMENT

JIM D. SYPRETT
THOMAS F. CAPSHEW
JAMES H. BURGESS, JR.
SYPRETT, MESHAD, RESNICK & LIEB, P.A.
1900 Ringling Boulevard
Sarasota, Florida 34236
(813) 365-7171
Counsel for Appellant

December 21, 1988

QUESTIONS PRESENTED

I. Whether the Town of Longboat Key's application of its Ordinance 81-27 is repugnant to the Equal Protection Clause of the Fourteenth Amendment of the Constitution of the United States when an impact fee to be used to acquire designated park land is assessed against a developer based upon the value of the development land rather than the development's pro rata share of the cost of acquiring the designated park land.

II. Whether the Town of Longboat Key's application of its Ordinance 81-27 is repugnant to the Due Process Clause of the Fourteenth Amendment of the Constitution of the United States when the Ordinance states that an impact fee shall be based upon the value of the designated park land but the Town exacts the fee based upon the value of the development land.

III. Whether an analysis of the Town of Longboat Key's Ordinance 81-27 under Florida's "rational nexus test," which requires an impact fee to offset but not exceed the park land needs attributable to the population impact of a development, and to be applied for the benefit of the new residents of the development, precludes challenges of the impact fee and Ordinance based upon federal constitutional guarantees.

No parties have been omitted from the caption. There were no other parties in any of the proceedings below. Pursuant to Sup. Ct. R. 28.1, the following is a listing of all parent companies, subsidiaries and affiliates of Appellant, Vroom Developments (Florida), Inc. The parent company of Appellant Vroom Developments (Florida), Inc. is The Vroom Corporation, Inc., a Delaware Corporation. The parent company of The Vroom Corporation, Inc. is The Vroom Corporation Limited, an Ontario Corporation. Appellant, Vroom Developments (Florida), Inc. has no other affiliates and no subsidiaries.

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No. _____

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1988

VROOM DEVELOPMENTS (FLORIDA), INC., *Appellant,*

v.

TOWN OF LONGBOAT KEY, *Appellee.*

ON APPEAL FROM THE DISTRICT COURT OF APPEAL, SECOND DISTRICT, STATE OF FLORIDA

JURISDICTIONAL STATEMENT

Vroom Developments (Florida), Inc., the appellant, appeals from the final decision of the District Court of Appeal, Second District, State of Florida, dated September 22, 1988, denying appellant's motion for rehearing, motion for rehearing en banc, and motion for certification of the District Court of Appeal, Second District's previous decision which affirmed, without opinion, the trial court's holding that the Town of Longboat Key's assessment of a fee in lieu of dedication of park land was not a violation of appellant's equal protection and due process rights guaranteed by the Fourteenth Amendment of the Constitution of the United States.

OPINIONS BELOW

The final amended order of the District Court of Appeal, Second District, State of Florida, denying appellant's motions is not reported. It is reprinted in the appendix hereto, p. 1a, *infra*. (The original order, dated the same day, had an incorrect listing of Judges. p. 2a, *infra*.) The decision of the District Court of Appeal, Second District, State of Florida, affirming without opinion, the trial court's final judgment is reported in a table at 531 So.2d 974 (Fla. 2d DCA 1988), and appears in the appendix hereto, p. 3a, *infra*.

The Final Judgment of the trial court, dated June 8, 1987, is not reported. It is reprinted in the appendix hereto, p.4a, *infra*.

JURISDICTION

The decision of the District Court of Appeal, Second District, State of Florida, affirming without opinion the trial court's order, finding the Town of Longboat Key's application of the ordinance not repugnant to the Constitution of the United States, was entered on June 24, 1988. See p. 3a, *infra*. A motion for rehearing, a motion for rehearing en banc, and a motion for certification were entertained and denied on September 22, 1988. See p. 1a, *infra*.

Pursuant to Fla. R. App. P. 9.030, the decision of the District Court of Appeal is not reviewable by any higher court in the state of Florida. See *Williams v. Florida*, 399 U.S. 78, 80 fn. 5 (1970).

A notice of appeal to this Court was timely filed in the District Court of Appeal, Second District, State of Florida, on December 15, 1988. See p. 8a, *infra*. A notice of appeal to this Court was timely filed in the Circuit Court in and for the Twelfth Circuit, Sarasota County, the court possessed of the record, on December 13, 1988. See p. 10a, *infra*.

This appeal is being docketed in this Court within ninety (90) days from the denial of rehearing below. The jurisdiction of this Court is invoked under 28 U.S.C. Section 1257(2).

Fourteenth Amendment, United States Constitution:

> * * * No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Ordinance No. 80-1, Town of Longboat Key:

> * * *
>
> Section 1. The map entitled "Open Space Master Plan" attached hereto is made a part of this Ordinance and hereby adopted. Said map properly attested shall be on file in the office of the Town Clerk inventorying land recommended for acquisition by the Town. * * *

Ordinance No. 81-27, Town of Longboat Key:

> * * *
>
> Section 1. * * *
>
> A. Purpose: This ordinance is enacted to ensure that future land development within the Town of Longboat Key preserves or provides land in its natural state for parks and open space required by the Longboat Key 1978 Comprehensive Plan, including Section 3 thereof entitled "Open Space and Recreation Element" and in the Capital Improvement Program of that Plan and are more particularly set forth in the "Open Space Master Plan" concurrently adopted with Ordinance 80-1 of the Town of Longboat Key.
>
> B. * * *
>
> 3. Requirements. As a condition precedent to the grant of any permits following approval of final development plans, site plans, subdivision plats, or issuance of a building permit, the developer shall deed land to the Town of Longboat Key, pay a money fee in lieu thereof or provide a combination of the above, at the option of the Town Com-

mission, to be used for parks and open space specified in this Ordinance and according to the standards and formula set forth in this Ordinance.

4. General Standard; Formula.

(a) It is hereby found and determined that the public interest, convenience, health, welfare and safety require that five (5) acres of land or equivalent money value be deeded or paid to the Town for each one thousand (1,000) persons residing in the Town to be devoted for said park and open space for purposes of this ordinance.

* * *

5. Formula for Fees in lieu of land conveyance.

(a) If it is determined that the proposed development does not include any land designated by the Open Space Master Plan as open space, to serve the immediate and future needs of the Town residents and the developer is unwilling or unable to deed to the Town lands outside the proposed development that are so designated, then the developer shall, in lieu of conveying land, pay a fee to the Town equal to the value of the land acreage that would otherwise have been required to be conveyed as determined by the formula herein, and in an amount determined in accordance with the provisions set out below, such fee to be used by the Town for acquisition of land and parks and open space which is intended to exclusvely serve the residents of the Town of Longboat Key.

(b) The provisions of this subsection shall automatically apply to all developments of twenty-five (25) dwelling units or less.

* * *

(Both Ordinance 80-1 and Ordinance 81-27 are reprinted in their entirety in the appendix hereto, p. 27a and p. 35a, *infra*.)

HOW THE FEDERAL QUESTION WAS RAISED

In the original complaint filed in the trial court below, appellant raised the federal questions raised in this appeal by alleging that Ordinance 80-1 and Ordinance 81-27 violate the "due process clause of the United States Constitution in the Fifth and Fourteenth Amendments." Appellant further alleged that the ordinances denied appellant "equal protection under the law...in violation of the Fourteenth Amendment to the United States Constitution." Each count of the Complaint contained a prayer that the court "[i]ssue a judgment declaring [the ordinances] unconstitutional and therefore null and void."

The trial court's final judgment stated that the ordinance would pass "federal and Florida constitutional muster if it meets the rational nexus test as analyzed in *Contractors and Builders Ass'n. v. City of Dunedin*, 329 So.2d 314, (Fla. 1976) [*cert. denied* 444 U.S. 867 (1979)] and *Hollywood, Inc. v. Broward County*, 431 So.2d 606, (Fla. 4th DCA 1983) [pet. rev. denied 440 So.2d 352 (Fla. 1983)]." The court went on to hold that "[t]he evidence established at trial convincingly shows that Ordinance 81-27 is constitutional and passes both prongs of the rational nexus test," and because it meets the standards of the test, it "is thus impervious to the constitutional attacks brought by [appellant]."

Appellant renewed the federal challenges raised at trial in its appeal to the District Court of Appeal, Second District, State of Florida. See certified copies of the issues raised on appeal, pp. 13a - 15a, *infra*. The distinction between the question of whether the ordinances meet the state constitutional "rational nexus test" and the question of whether the ordinances are repugnant to federal constitutional provisions was most clearly drawn in appellant's motion for rehearing and motion for certification, filed with the District Court of Appeal, Second District. See pp. 17a - 21a, 25a - 26a, *infra*. In both of those motions, the issue was presented that even if the ordinances pass state constitutional muster by meeting the "rational nexus" test, the ordinances still violate federal due process and equal protection constitutional provisions.

STATEMENT OF THE CASE

The appellant, Vroom Developments (Florida), Inc., is a Florida corporation engaged in the business of developing property. Appellant owned two parcels of real property on Longboat Key which front the Gulf of Mexico. Appellant had plans to develop one of the parcels into a 26 unit condominium named Longboat Cove. The other parcel was to be developed into a nine (9) unit condominium named Pelican Harbor. Neither parcel included land designated for acquisition by appellee pursuant to its "Open Space Master Plan."

In order to receive a building permit for each of the projects, appellee required appellant to pay a fee in lieu of dedication of open space or park lands, based upon Ordinances 80-1, 80-9 and 81-27. Appellee assessed an "in lieu" fee of $21,448.44 against appellant for the nine (9) unit Pelican Harbor development. Appellee assessed an "in lieu" fee of $61,962.35 against appellant for the 26 unit Longboat Cove development. Appellant paid the fees under protest and initiated this action to have the Ordinances and appellee's application of them declared unconstitutional on both state and federal grounds.

Prior to trial, the parties stipulated to several matters. The parties stipulated that the amendments set forth in Ordinance 81-27 apply to this case. The parties stipulated that five (5) acres of park or open space land per 1,000 population increase was a reasonable standard to offset the impact of the increased population. The formula adopted by appellee in Ordinance 81-27 requires .01 acres per dwelling unit for single family, duplex, and multi-family developments. See Ordinance 81-27, Section 1, B4(C), p. 37a, *infra*.

The evidence produced at trial may be fairly summarized as follows:

(1) The appellant presented expert witness testimony of a real estate appraiser, who testified that the value of the land designated in the "Open Space Master Plan" equaled $1.00 per square foot.

(2) The impact fee paid by appellant for the two developments equaled $5.47 per square foot, or $2,762.00 per dwelling unit. The impact fee assessment was based on the value of the land being developed rather than the value of the lands earmarked for acquisition by appellee in its then-current "Open Space Master Plan."

(3) Appellant's expert testified that the value of the designated land was "far less" than the value of appellant's land. He also testified that under appellee's application of the ordinance, one development with an impact identical to a second development could pay twice the fee assessed against the second development.

(4) The appellee presented expert witness testimony of a land economist, who testified that the impact fee paid by the appellant was no greater than the per dwelling unit cost of parks and open space currently provided to the existing population. The expert witness used an impact fee methodology known as the "per capita" or "replacement" methodology. He testified that appellee's current inventory of open space and recreation lands was 14 acres per 1,000 which translates to $2,996.00 per dwelling unit. The "current inventory" used by the expert witness only included lands already acquired by appellee, and did not include any lands designated to be acquired with the funds raised from the impact fee assessment. The expert witness further testified that the impact fee paid by appellant was $2,762.00, which was less than the current per dwelling unit investment.

The Trial Court found that the assessment met the two-pronged "rational nexus test" (a state constitutional test) and "is thus impervious to the constitutional attacks brought by [appellant]." See Final Judgment, p. 4a, *infra.*

THE QUESTION IS SUBSTANTIAL

The question of whether a municipality can assess an impact fee based on the value of the land being developed rather than based on the development's pro-rata share of the capital improvement without violating federal constitutional standards is a novel and substantial one. It has never been treated before by this Court.

Citizens of this country have a reasonable expectation of being provided with the accoutrements of civilization, including road systems, parks, public facilities, police and fire protection, libraries, and schools. Funding for these trappings of a civilized society is expected to come from national, state and local governmental entities. Earlier cases decided by this Court imposed federal constitutional constraints on local governments' imposition of special tax assessments to fund

capital improvements. *Butters v. City of Oakland*, 263 U.S. 162 (1923) (upholding the City of Oakland's special tax assessment for street improvement where the assessment was allocated to individual property owners based upon the benefit received); *Myles Salt Company v. Board of Commissioners*, 239 U.S. 478 (1916) (holding that federal constitutional provisions are violated when a special tax assessment to fund a drainage system in a special drainage district is levied against property located within the district but not benefited by the drainage system); and *Paulsen v. City of Portland*, 149 U.S. 30 (1893) (holding that the notice given for a special tax assessment to pay for a newly constructed sewer met the due process requirements of the federal Constitution).

In the last twenty (20) years, citizens have become increasingly critical of, and recalcitrant in, paying taxes at the state and federal levels. This taxpayer revolt has caused a corresponding stricture in the flow of federal and state funding. In growing communities, the demand for capital improvements continues unabated. As extra-territorial funding diminishes, some states have enacted enabling legislation to allow local governments to generate funding for the accoutrements of civilization. See, *eg.* Me. Rev. Stat. Ann. tit. 30, Section 4961-A (West Supp. 1988).

Early challenges of impact fees focused on the enabling legislation and whether the governmental entity had the authority to impose such a fee. These challenges continue to arise. See, *eg.*, *New Jersey Builders Ass'n. v. Bernards Township*, 108 N.J. 223, 528 A.2d 555 (1987) (holding that a municipal ordinance assessing an impact fee for road improvement was an invalid exercise of municipal authority).

Counties and municipalities continue to extract impact fees for the projects traditionally funded by impact fees. See, *eg. Loup - Miller Construction v. City and County of Denver*, 676 P.2d 1170 (Colo. 1984) (upholding the constitutionality of an ordinance governing charges and fees to finance Denver's sanitary sewer facilities); and *Call v. City of West Jordan*, 727 P.2d 180 (Utah 1986) (holding an ordinance imposing an impact fee for the acquisition of park lands and land for flood control was not properly enacted by the municipality).

Recent cases indicate that impact fees have gained a broader range of application, especially in the growth states. The City and County of San Francisco has imposed an impact fee upon new downtown office buildings based upon the new development's impact of increased de-

mand for public transportation downtown. *Russ Bldg. Partnership v. San Francisco,* 44 Cal.3d 839,750 P.2d 324, 244 Cal.Rptr. 682 (1988). The impact fee assessed against two of the developers was approximately 2.4 million dollars each. *Id.*, 750 P.2d at 326, n.5. The ordinance described the purpose of the assessment as providing revenue for the municipal railway. *Id.*, at 326. The state of California has enacted legislation authorizing Orange County and cities located therein "to impose fees as a condition of subdivision map approval or building permit issuance, with the fees to be used to defray the cost of constructing major thoroughfares and bridges to service the new development." *Committee of Seven Thousand v. Superior Ct.* 45 Cal.3d 491, 754 P.2d 708, 247 Cal.Rptr. 362 (1988), referencing Cal. Gov't Code, Section 66484.3 (West Supp. 1988).

In some states, such as Florida, no enabling legislation has been passed by the State Legislature, leaving the development of the parameters of the constitutionality of various impact fee assessments to the courts. The issues presented in this case need to be addressed by this Court to reinforce the fact that citizens of this nation have federal constitutional rights separate from, and independent of, state constitutional rights.

Many cases have challenged the imposition of an impact fee as a taking of property without due process of law. See generally Juergensmeyer & Gragg, *Limiting Population Growth in Florida and the Nation: the Constitutional Issues,* 26 U. Fla. L. Rev. 758, 772 (1974), and cases cited therein. This Court has recently addressed a similar issue. In a 5 - 4 decision two terms ago, this Court decided that requiring a property owner to convey an easement as a condition of obtaining a land use permit constituted a "taking" within the meaning of the Fifth Amendment when there is no "nexus" between the condition imposed and the original purpose of the building restriction. *Nollan v. California Coastal Comm'n.*, 107 S.Ct. 3141 (1987). This Court has also held that zoning ordinances regulating land use do not rise to the level of a "taking" when the ordinance does not prevent the best use of the land or extinguish a fundamental attribute of ownership. *Agins v. City of Tiburon*, 447 U.S. 255, 262 (1980). This Court has not addressed, however, the issue of whether a land use regulation which does not rise to the level of a "taking" must still comply with due process and equal protection requirements of the Constitution of the United States.

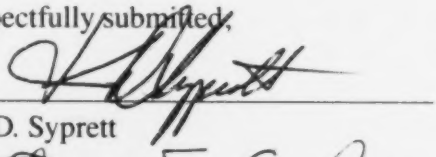
California has characterized impact fees as a tax. *Committee of Seven Thousand,* 754 P.2d at 709. Florida has expressly ruled that impact fees are not a tax, but a fee for services rendered. *Contractors and Builders Ass'n. v. City of Dunedin*, 329 So.2d, 314, 317 (Fla. 1976). Justice Blackmun stated in his dissenting opinion in *Nollan:* "The land-use problems this country faces require creative solutions." 107 S.Ct. at 3162. Whatever characterization of impact fees is used, and whatever creative solutions are spawned, governmental entities imposing fees as a condition of allowing development need guidance in delineating the parameters of the powers bestowed upon them.

The questions presented in this case are not only substantial, but also straight forward. As the cases in this area develop both in the federal court system and the state court systems, it is imperative that there be a precedent established by the highest court in this land that addresses the federal constitutional questions raised by the imposition of impact fees irrespective of the state constitutional and legislative restrictions.

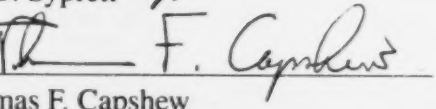
CONCLUSION

For these reasons, this Court should note probable jurisdiction of this appeal.

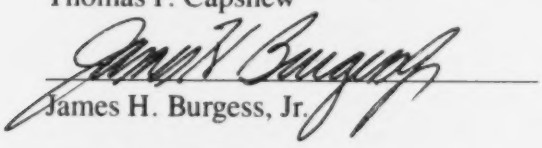
Respectfully submitted,



Jim D. Syprett



Thomas F. Capshew



James H. Burgess, Jr.

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(813) 365-7171
Attorneys for Appellant

AFFIDAVIT OF SERVICE

STATE OF FLORIDA
COUNTY OF SARASOTA

On this day personally appeared Thomas F. Capshew, who was duly sworn and states that service of this Jurisdictional Statement was made by regular U.S. Mail on this 21st day of December, 1988, pursuant to Rule 10.2 and Rule 28.5(c) of the Supreme Court Rules, on Scott R. Christiansen, Esq., 1487 Second Street, Sarasota, Florida 34236 and Nancy E. Stroud, Esq., 1900 Glades Road, Suite 350, Boca Raton, Florida 33431. All parties required to be served have been served.

Thomas F. Capshew
SYPRETT, MESHAD, RESNICK
& LIEB, P.A.
1900 Ringling Boulevard
P.O. Box 1238
Sarasota, Florida 34236
(813) 365-7171
Attorneys for Appellant

SWORN TO and subscribed in my presence, this 21st day of December, 1988.

NOTARY PUBLIC

NOTARY PUBLIC STATE OF FLORIDA
MY COMMISSION EXP. APR.19,1992
BONDED THRU GENERAL INS. UND.

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IN THE SECOND DISTRICT COURT OF APPEAL,
LAKELAND, FLORIDA
SEPTEMBER 22, 1988

VROOM DEVELOPMENTS (FLORIDA), Appellant, v. TOWN OF LONGBOAT KEY, Appellee.	Amended Order Case No. 87-2553

Counsel for appellant having filed a motion for rehearing and motion for rehearing en banc in the above-styled case, upon consideration, it is

ORDERED that said motions are hereby denied. It is further

ORDERED that appellants' motion for certification is hereby denied.

SCHOONOVER, A.C.J., and PARKER, J., Concur.
HALL, J., would grant motion for certification.

A TRUE COPY
ATTEST
/s/ WILLIAM A. HADDAD, CLERK
SECOND DISTRICT COURT OF APPEAL

c: Jim D. Syprett, Esquire
Scott Christiansen, Esquire
Nancy E. Stroud, Esquire

IN THE SECOND DISTRICT COURT OF APPEAL,
LAKELAND, FLORIDA
SEPTEMBER 22, 1988

VROOM DEVELOPMENTS
(FLORIDA), INC.,
Appellant,
v.
TOWN OF LONGBOAT KEY,
Appellee.

Case No. 87-2553

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SCHEB, A.C.J., and PARKER, J., Concur.
HALL, J., would grant motion for certification.

A TRUE COPY
ATTEST
/s/ WILLIAM A. HADDAD, CLERK
SECOND DISTRICT COURT OF APPEAL

c: Jim D. Syprett, Esquire
Scott Christiansen, Esquire
Nancy E. Stroud, Esquire

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF FILED, DETERMINED.

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

VROOM DEVELOPMENTS (FLORIDA), INC.,
Appellant,
v.
TOWN OF LONGBOAT KEY,
Appellee.

Case No. 87-2553

Opinion filed June 24, 1988.

Appeal from Circuit Court for Sarasota County; Andrew D. Owens, Jr., Judge.

Jim D. Syprett
of Syprett, Meshad, Resnick & Lieb, P.A., Sarasota,
for the Appellant.

Nancy E. Stroud
of Burke, Bosselman & Weaver, Boca Raton,
for the Appellee.

PER CURIAM.

Affirmed.

SCHOONOVER, A.C.J., and HALL and PARKER, JJ., Concur.

IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT OF FLORIDA IN AND FOR SARASOTA COUNTY, FLORIDA

VROOM DEVELOPMENTS (FLORIDA), INC. (VROOM), Plaintiff, vs. TOWN OF LONGBOAT KEY, Defendant.	CASE NO. 84-3836-CA-01

FINAL JUDGMENT

THIS MATTER came for trial before the Court without a jury with the plaintiff, VROOM DEVELOPMENTS, INC., being represented by James D. Syprett, and the defendant, Town of Longboat Key, being represented by Nancy E. Stroud and Scott R. Christiansen. Upon the evidence presented it is hereby

ORDERED AND ADJUDGED as follows:

1. The Town of Longboat Key (the "Town") enacted its Parks and Open Space Acquisition Ordinance, No. 81-27, (the "Ordinance") to ensure that land within the Town remains available for parks and open space. The Ordinance requires that five (5) acres of land be deeded or an equivalent sum of money paid by the developer to the Town for every one thousand persons residing in a proposed development. The land deeded or money paid must be devoted for parks and open space purposes. The land to be dedicated to the Town may be located either within or outside the boundaries of the development at issue. An in lieu fee must be in an amount equal to the value of the land that otherwise would have been dedicated under the Ordinance. The Commission's choice of land or fee is based on a number of listed factors pertaining to the desirability of land proposed for dedication.

2. On the basis of the Ordinance plaintiff was assessed a fee of

$21,448.44 in lieu of dedicating land for the nine units in its Pelican Harbor development. An in lieu fee of $61,962.35 was charged for the twenty six units of plaintiff's Longboat Cove development. Plaintiff paid both in lieu fees under protest.

3. Plaintiff brought suit against the Town challenging the constitutionality of Ordinance 81-27. Plaintiff claims the Ordinance violates its due process and equal protection rights; that is unconstitutional, vague and indefinite; that it takes property without just compensation; and that it is an improper tax in violation of Article 7, Section 2 of the Florida Constitution.

4. Ordinance 81-27 passes federal and Florida constitutional muster if it meets the "rational nexus test" as analyzed in Contractors & Builders Ass'n., v. City of Dunedin, 329 So.2d 314 (Fla. 1976) and Hollywood, Inc., v. Broward County, 431 So.2d 606 (Fla. 4th DCA 1983). The rational nexus test requires a two-pronged analysis for land development regulations of this type: first, whether there is a rational nexus between the need for additional open space and parks and the population growth generated by the development; second, whether the land or in lieu payment is earmarked so that the residents of the development in question receive a reasonable benefit from the land or fee provided.

5. The evidence established at trial convincingly shows that Ordinance 81-27 is constitutional and passes both prongs of the rational nexus test.

6. The Ordinance meets the first prong by reasonably offsetting the park and open space needs created by new development. The Town's expert witness, Dr. James Nicholas, provided credible testimony that the fee in lieu requirement of the ordinance met this first prong under two different methods. First, the five acres per 1000 residents standard of the Ordinance was shown to be not more than what is currently provided residents of the Town.

Second, Dr. Nicholas' testimony demonstrated the reasonableness of the Ordinance under the "replacement value" approach commonly used for impact fee ordinances. Under this approach the current inventory of parks and open space lands and facilities are valued at an ad-

justed or "current year" value. The credible evidence established that the fee paid by plaintiff is less than the park and open space replacement value for an average dwelling unit. Furthermore, the cost for plaintiff's two projects would be greater than average because the size of the units in those projects is greater than the average size of units on Longboat Key.

The first prong of the rational nexus test is thus met because the fee paid by plaintiff was reasonably necessary to offset the park and open space needs created by the new development.

7. Ordinance 81-27 meets the second prong of the rational nexus test by properly earmarking the fees received and sufficiently benefiting the residents of plaintiffs' Longboat Cove and Pelican Harbor projects. Both Dr. Nicholas and Ms. Ann Satterthwaite provided credible testimony showing that new residents living in plaintiff's developments would receive a reasonable benefit from the park and open space land created by the Ordinance. The Ordinance itself provides that all in lieu fees will be placed in an earmarked account to be used and expended solely for the acquisition, improvement, and expansion of Town parks and open space land. The Ordinance thus provides both the benefit and earmarking required by the second prong of the rational nexus test.

8. Ordinance 81-27 meets the standards of the rational nexus test and is thus impervious to the constitutional attacks brought by plaintiff.

9. Plaintiff, VROOM DEVELOPMENTS, INC., shall take nothing by its complaint and the defendant, TOWN OF LONGBOAT KEY, shall go hence without day.

10. Jurisdiction is reserved for the taxation of the costs of this action upon proper motion.

ORDERED at Sarasota, Sarasota County, Florida, this 8th day of June, 1987.

/s/ Andy Owens
Circuit Judge

Copies Furnished To:
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IN THE DISTRICT COURT OF APPEAL
SECOND DISTRICT, STATE OF FLORIDA

VROOM DEVELOPMENT
(FLORIDA), INC.,
Appellant,
v.
TOWN OF LONGBOAT KEY,
Appellee.

FILED
'88 DEC. 15

NO. _____

NOTICE OF APPEAL TO THE SUPREME COURT
OF THE UNITED STATES

Notice is hereby given that Vroom Development (Florida), Inc., the Appellant above named, hereby appeals to the Supreme Court of the United States from the final decision of the District Court of Appeal, Second District, State of Florida, denying Appellant's Motion for Rehearing, Motion for Rehearing En Banc, and Motion for Certification to the Florida Supreme Court, entered in this action on September 22, 1988.

This Appeal is taken pursuant to 28 U.S.C. 1257(2).

AFFIDAVIT OF SERVICE

STATE OF FLORIDA
COUNTY OF SARASOTA

On this day personally appeared Thomas F. Capshew, who was duly sworn and states that service of this Notice of Appeal to the Supreme Court of the United States was made by regular U.S. Mail on this 12th day of December, 1988, pursuant to Rule 10.2 and Rule 28.5(c) of the Supreme Court Rules, on Scott R. Christiansen, Esq., 1487 Second Street, Sarasota, Florida 34236 and Nancy E. Stroud, Esq., 1900 Glades Road, Suite 350, Boca Raton, Florida 33431. All parties required to be served have been served.

/s/ Thomas F. Capshew
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& LIEB, P.A.
1900 Ringling Boulevard
P.O. Box 1238
Sarasota, Florida 34236
(813) 365-7171
Attorneys for Appellant

SWORN TO and subscribed in my presence this 12th day of December, 1988.

/s/John D. Dumbaugh (SEAL)
NOTARY PUBLIC STATE OF FLORIDA
My commission expires: March 2, 1991
Bonded through Notary Public Underwriters

STATE OF FLORIDA
COUNTY OF POLK

This copy is a true copy of original Notice of Appeal on file in this office. Witness, my hand and official seal this 15th day of December, 1988.

/s/ William A. Haddad
Clerk
Second District Court of Appeal

IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT OF FLORIDA IN AND FOR SARASOTA COUNTY, FLORIDA

VROOM DEVELOPMENT
(FLORIDA), INC.,
Appellant,
v.
TOWN OF LONGBOAT KEY,
Appellee.

NO. 84-3836-CA-01

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that Vroom Development (Florida), Inc., the Appellant above named, hereby appeals to the Supreme Court of the United States from the final decision of the District Court of Appeal, Second District, State of Florida, denying Appellant's Motion for Rehearing, Motion for Rehearing En Banc, and Motion for Certification to the Florida Supreme Court, entered in this action on September 22, 1988.

This Appeal is taken pursuant to 28 U.S.C. 1257(2).

AFFIDAVIT OF SERVICE

STATE OF FLORIDA
COUNTY OF SARASOTA

On this day personally appeared Thomas F. Capshew, who was duly sworn and states that service of this Notice of Appeal to the Supreme Court of the United States was made by regular U.S. Mail on this 13th day of December, 1988, pursuant to Rule 10.2 and Rule 28.5(c) of the Supreme Court Rules, on Scott R. Christiansen, Esq., 1487 Second Street, Sarasota, Florida 34236 and Nancy E. Stroud, Esq., 1900 Glades Road, Suite 350, Boca Raton, Florida 33431. All parties required to be served have been served.

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SWORN TO and subscribed in my presence this 13th day of December, 1988.

/s/Sharon L. Gates (SEAL)
NOTARY PUBLIC STATE OF FLORIDA
My commission expires: May 30, 1990
Bonded through General Ins. Und.

Filed in Sarasota County Official Record Book 002083 at Page 000644 on December 13, 1988, at 4:57 p.m.

IN THE SECOND DISTRICT COURT OF APPEAL,
LAKELAND, FLORIDA

VROOM DEVELOPMENTS
(FLORIDA), INC.,
Appellant,
v.
TOWN OF LONGBOAT KEY,
Appellee.

CASE NO. 87-2553

STATE OF FLORIDA
COUNTY OF POLK

I, WILLIAM A. HADDAD, Clerk of the Second District Court of Appeal for the State of Florida, hereby certify that the attached pages are true and correct copies of the following original documents filed in this office:

1. "Issue" page of Appellant's Initial Brief.
2. "Table of Contents" page of Appellee's Answer Brief.
3. "Table of Contents" page of Appellant's Reply Brief.
4. "Appellant's Motion for Rehearing" in its entirety.
5. Appellant's "Motion for Rehearing En Banc" in its entirety.
6. Appellant's "Motion for Certification" in its entirety.

WITNESS my hand and seal this 8th day of December, 1988.

SEAL) /s/ William A. Haddad, Clerk
SECOND DISTRICT COURT
OF APPEAL

SWORN TO and subscribed in my presence, this 8th day of December, 1988.

/s/Charles F. Weeks (SEAL)
Notary Public
My commission expires: September 29, 1989.

ISSUE

Whether Ordinance 81-27, applied by assessing the in lieu of land dedication fee on the value of the development land rather than the designated land, fails the "rational nexus" test or is otherwise improper?

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IN THE DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

VROOM DEVELOPMENTS
(FLORIDA) INC.,
Appellant,
vs. CASE NO. 87-2553
TOWN OF LONGBOAT KEY,
Appellee.

APPELLANT'S MOTION FOR REHEARING

Appellant, VROOM DEVELOPMENTS (FLORIDA) INC., moves this Honorable Court for a rehearing and shows:

1. This Honorable Court issued a per curiam affirmance in this case on June 24, 1988, a copy of which is attached.

2. This Court has either misapprehended or overlooked Appellant's argument in its Reply Brief (p. 17-19) as to the due process and equal protection arguments. Even if the Court determines that the Ordinance meets the "rational nexus" test, the Ordinance, as applied by Appellee, violates the equal protection and due process clauses of both the Florida (Art. I, Sec. 2, Sec. 9, Fla. Const.) and United States (U.S. Const. Amend. XIV, Sec. 1) Constitutions.

It is clear that the purpose of the Ordinance is to allow Appellee to acquire open space and park lands in order to keep pace with new development on Longboat Key. The "impact fee" in lieu of conveyance of property authorized by the Ordinance may only offset but not exceed the "impact" of new residents by funding the acquisition of recreational property. Hollywood, Inc. v. Broward County, 431 So.2d 606 (Fla. 4th DCA 1983); Contractors & Builders Ass'n v. City of Dunnedin, 329 So.2d 314 (Fla. 1976).

A. Equal Protection:

As the Ordinance is applied by Appellee, the amount of the impact fee to be paid is determined by the value of the land being developed.

Appellee's application of the Ordinance violates the equal protection clause of the Florida and U.S. Constitutions in that similarly situated developers who have the exact same population impact and would derive the exact same benefit are treated (or "taxed") differently. For example:

	Developer A	Developer B
Size of Property	1 acre	1 acre
Number of Units on Property	9	9
Location of Property	Bayside	Gulfside
Cost of Land to be developed	$100,000.00	$200,000.00
Fee in Lieu	x	2 times x

Therefore, Developer B, whose development has the exact same population impact as Developer A, is forced by Appellee to fund twice the amount of open space and park land acquisition as Developer A, in violation of the equal protection clause.

B: Due Process:

It is clear that in lieu impact fees, if properly enacted and properly assessed, can pass constitutional muster. See Hollywood, supra. An ordinance must give those affected by it notice of how it affects them. Put another way, if the affected party cannot ascertain from the face of the ordinance what assessment will be made on that party, then it is void for vagueness. Hartnett v. Austin, 93 So.2d 86 (Fla. 1956).

The Fifth District Court of Appeals in Opperman v. Nationwide Mutual Fire Insurance Co., 515 So.2d 263 (5th DCA 1987) most clearly stated the "plain meaning rule":

> When the language of a statute is clear and unambiguous and conveys a clear and definite meaning, there is no occasion for resorting to the rules of statutory construction; the statute must be given its plain and obvious meaning. Holly v. Auld, 450 So.2d 217 (Fla. 1984).
>
> Id. at 266, n.

Appellee, in enacting the Ordinance, recognized this "due process" requirement, and in Section B. 5(a), specifically provided:

> If . . . the proposed development does not include any land designated by the Open Space Master Plan . . . then the developer shall . . . pay a fee . . . equal to the value of the land acreage that would otherwise have been required to be conveyed . . . . (Emphasis added.)

A plain meaning reading requires the fee to be based upon the value of the "designated lands" which the Town admits it did not do when assessing the fee against Vroom and all others. This is a case of FIRST IMPRESSION in the State of Florida. All "impact fee" ordinances in Florida, whether for parks, open space or water, sewer, or other capital needs have met the DUE PROCESS requirement by (a) stating a plain meaning description of the assessment; and (b) applying the assessment in accordance with the description. Hollywood, Inc., supra and Contractors & Builders Ass'n v. City of Dunedin, 329 So.2d 314 (Fla. 1976) are consistent with this proposition.

Ordinance 81-27, given its plain meaning reading was unconstitutionally applied when Appellee assessed the fee based upon the value of land (within the development) which would not "otherwise have been required to be conveyed". Sec. B.5(a) and (b) of Ordinance 81-27. Alternatively, if the Court applies rules of construction to the Ordinance to authorize the assessment as made by Appellee, the Ordinance still fails the due process challenge because it fails to properly notify those affected as to how it affects them and is unconstitutionally vague.

The evidence unequivocally established Appellee's application of the assessment, and Appellee's evidence clearly established Vroom paid a fee equal to the cost to acquire 14 acres per 1000 residents or stated on a per unit basis, .028 acres per dwelling unit, when the standard is 5 acres per 1000 persons, or .01 acres per dwelling unit. Sec. B(4)(a) and (b) of Ordinance 81-27. (R. at 84). When Appellee's own expert's testimony is compared to the Hollywood evidence, the due process violation is glaring: (Hollywood, Inc. at 612).

	Hollywood, Inc.	Vroom
Standard	3 acres/1000 residents	5 acres/1000 residents (Stipulated as reasonable by the parties)
Amount actually assessed per evidence in each case.	"less than the standard" Id. at 612	14 acres/1000 residents R. at 84.

For these reasons, Appellee's Ordinance as applied or, alternatively, as interpreted violates the due process clause of the Florida (Art. I., Sec. 9, Fla. Const.) and United States (U.S. Const. Amend. XIV, Sec. 1) Constitutions.

3. This Per Curiam Affirmance adopts a lower court decision containing a MISCONCEPTION OF LAW and will engender enormous confusion in the law concerning impact fees in the State of Florida. Hollywood, supra and Dunedin, supra, had brought clarity to impact and in lieu fees, but neither case dealt with the vagueness, due process and equal protection issues Appellee created by its application of its ordinance. THIS CASE PRESENTS AN ISSUE OF FIRST IMPRESSION, WHICH THIS COURT HAS OVERLOOKED.

The Circuit Court specifically acknowledged Appellant's challenges to Ordinance 81-27:

> 3. Plaintiff brought suit against the Town challenging the constitutionality of Ordinance 81-27. Plaintiff claims the Ordinance violates its due process and equal protection rights; that is unconstitutional, vague and indefinite; that it takes property without just compensation; and that it is an improper tax in violation of Article 7, Section 2 of the Florida Constitution."

Final Judgment, Para. 3, R. at 985.

The Circuit Court believed that the "rational nexus test" disposed of all of these constitutional challenges:

> Ordinance 81-27 passes federal and Florida constitutional muster if it meets the "rational nexus test" as analyzed in Contractors & Builders Ass'n. v. City of Dunedin, 329 So.2d 314 (Fla. 1976), and Hollywood, Inc., v. Broward County, 431 So.2d 606 (Fla. 4 DCA 1983).

Final Judgment, Para. 4, R. at 985.

THIS STATEMENT IS WRONG. Incredibly, the Circuit Court addressed only the taking and improper tax issues by application of the "rational nexus test" and held that since the Ordinance passed that test, it could not be constitutionally attacked on any other basis.

> Ordinance 81-27 meets the standards of the rational nexus test and is thus impervious to the constitutional attacks brought by plaintiff.

Final Judgment, Para. 8, R. at 986. This holding is based upon a misunderstanding of the reach of the rational nexus test. The Circuit Court thus ignored Appellant's vagueness, due process and equal protection challenges. This Court's decision in Contractors & Builders Ass'n of Pinellas County v. City of Dunedin, 312 So.2d 763, 767 (Fla. 2d DCA 1975), rem. on other grounds, 329 So.2d 314 (Fla. 1976) specifically acknowledges that other constitutional issues are not foreclosed just because an ordinance withstands the improper tax challenge.

The Circuit Court has thus established, as a rule of law, that an impact fee ordinance passes federal and Florida constitutional muster if it meets the "rational nexus test" regardless of whether or not the ordinance is unconstitutionally vague, or violative of due process or equal protection requirements. THIS IS A MISCONCEPTION OF LAW. The rational nexus test does not address the plain meaning of the ordinance, or whether the application of the ordinance has been consistent with its plain meaning, or whether those affected by the ordinance have sufficient notice as to its meaning. The rational nexus test does not address the fact that developments with equal impact are assessed different impact fees solely because their land values differ. In short, these issues are not resolved by application of the rational nexus test. THIS IS A CLEAR MISTAKE OF LAW WHICH MANDATES CORREC-

TION. This Court's Per Curiam Affirmance of such a gross misconception will no doubt delay the evolution of this important area of law in Florida until corrected by another Florida jurisdiction or perhaps a federal court.

4. The increasing use of impact fees creates an urgent need for an appellate level opinion analyzing the constitutionality of Appellee's method of assessing "impact fees", to fund a defined capital expenditure program. (Refer to Para 1 of Motion for Rehearing En Banc for further explanation).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing was mailed this 1st day of July, 1988 to: SCOTT CHRISTIANSEN, 1487 Second Street, Sarasota, Florida 34236; and NANCY E. STROUD, ESQUIRE, 1900 Glades Road, Suite 350, Boca Raton, Florida 33431.

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By: /s/ Jim D. Syprett
Attorney for Appellant

IN THE DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

VROOM DEVELOPMENTS
(FLORIDA) INC.,
Appellant,
vs.
TOWN OF LONGBOAT KEY,
Appellee.

CASE NO.: 87-2553

MOTION FOR REHEARING EN BANC

Counsel for Appellant, VROOM DEVELOPMENTS (FLORIDA), INC., moves this Court for a rehearing en banc, and shows:

1. The Circuit Court opinion which this Court adopted as its opinion per curium affirmance conflicts with the Second District Court's City of Dunedin v. Contractors & Builders Ass'n, 312 So.2d 763 (Fla. 2nd DCA 1975), opinion by Judge Grimes, the logic of which was adopted by the Supreme Court, Contractors & Builders Ass'n v. City of Dunedin, 329 So.2d 314 (Fla. 1976). Dunedin's ordinance defined a specific capital expenditure program, i.e., water and sewer capital expansion needs due to new residents. Ordinance 81-27 defines a specific capital expenditure program, i.e., designated land for parks and open space needs due to new residents. THE FIRST IMPRESSION ISSUE here is created because Appellee bases the fee assessment to new residents on value of their land and NOT THEIR PRO RATA SHARE of the DEFINED CAPITAL EXPENDITURE PROGRAM. Judge Owens in the Final Judgment held "replacement cost" of existing parks, not projected cost of prospective capital acquisitions, was the proper test. (Paragraph 6 of Final Judgment). This conflicts with Judge Grimes' opinion, Dunedin, supra, p. 766 and 767, wherein he reasoned that the cost of prospective capital improvements was the appropriate measure of the pro rata share.

Judge Owens' Final Judgment in Paragraphs 3, 4, and 8 conflicts

with this Court's opinion in Dunedin, supra p. 767 wherein Judge Grimes acknowledged, even though the ordinances meets [sic] the taking and taxation tests (rational nexus), the constitutional issues must also be answered.

2. This Court's Per Curiam Affirmance specifically adopts a gross misconception of the law concerning impact fees. The lower Court, after acknowledging Appellant's taking, improper tax, vagueness, due process and equal protection constitutional challenges, held:

> Ordinance 81-27 meets the standards of the rational nexus test and is thus impervious to the vagueness, due process and equal protection constitutional attacks brought by plaintiff."

(Final Judgment, Paragraphs 3,8, R. at 985-986. This is simply not the law. Judge Grimes' opinion in Dunedin, supra at 767 acknowledged that even though an ordinance passes the taking and taxation tests (i.e. the rational nexus test), the other constitutional issues must be addressed. The rational nexus test is only designed to address the taking and improper tax constitutional challenges. The vagueness, due process and equal protection constitutional challenges are separate and distinct issues, and are not, and cannot be, subsumed within the rational nexus test.

3. I express a belief, based on a reasoned and studied professional judgment, that a panel decision is of exceptional importance.

4. I express a belief, based on a reasoned and studied professional judgment, that the arguments presented in the Briefs and in the attached Motion for Rehearing, show that this case is of exceptional importance in that impact fees are being assessed ever more frequently in this district, and an En Banc opinion other than a per curiam affirmance, whether an affirmance or a reversal, would be of great benefit to the bench and bar in determining the constitutionality of future impact fee assessments. Unless an opinion is rendered on the constitutional issues

ignored in the FINAL JUDGMENT, both Appellant and Appellee are left with unanswered questions which will cause further challenges and impair Appellee's ability to use funds it is holding, that were collected under protest.

/s/ Jim D. Syprett
Attorney for Appellant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing was mailed this 1st day of July, 1988 to: SCOTT CHRISTIANSEN, ESQUIRE, 1487 Second Street, Sarasota, Florida 34236; and NANCY E. STROUD, ESQUIRE, 1900 Glades Road, Suite 350, Boca Raton, Florida 33431.

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By: /s/ Jim D. Syprett
Attorney for Appellant

IN THE DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

VROOM DEVELOPMENTS
(FLORIDA) INC.,
Appellant,
vs.
TOWN OF LONGBOAT KEY,
Appellee.

CASE NO.: 87-2553

MOTION FOR CERTIFICATION

Appellant, VROOM DEVELOPMENTS (FLORIDA), INC., moves this Honorable Court for rehearing and respectfully requests that this Court withdraw its per curiam affirmance and issue an opinion certifying the following questions, or similar questions, to the Supreme Court of Florida as being questions of great public importance under Fla.R. App. P. 9.030(a)(2(A)(v):

QUESTION #1:
DOES A FINDING THAT AN IN LIEU IMPACT FEE ORDINANCE, SUCH AS ORDINANCE 81-27, SATISFIES THE RATIONAL NEXUS TEST, MAKE SUCH ORDINANCE IMPERVIOUS TO ALL OTHER CONSTITUTIONAL CHALLENGES SUCH AS VAGUENESS, DUE PROCESS AND EQUAL PROTECTION VIOLATIONS UNDER FEDERAL AND FLORIDA CONSTITUTIONS?

QUESTION #2:
IS THE TOWN'S APPLICATION OF ORDINANCE 81-27 REQUIRING A "FEE IN LIEU" OF LAND DEDICATION TO BE BASED UPON THE VALUE OF THE DEVELOPMENT LAND, RATHER THAN THE VALUE OF THE DESIGNATED PARK AND OPEN SPACE LAND INCONSISTENT WITH;

(1) THE PLAIN MEANING RULE;
(2) FEDERAL AND FLORIDA DUE PROCESS REQUIREMENTS; OR
(3) FEDERAL AND FLORIDA EQUAL PROTECTION REQUIREMENTS?

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing was mailed this 1st day of July, 1988 to: SCOTT CHRISTIANSEN, ESQUIRE, 1487 Second Street, Sarasota, Florida 34236; and NANCY E. STROUD, ESQUIRE, 1900 Glades Road, Suite 350, Boca Raton, Florida 33431.

SYPRETT MESHAD RESNICK & LIEB
1900 Ringling Boulevard
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(813) 365-7171

By: /s/ Jim D. Syprett
Attorney for Appellant

ORDINANCE NO. 80-1

AN ORDINANCE ADOPTING THE "OPEN SPACE MASTER PLAN;" AMENDING APPENDIX B, ZONING OF THE CODE OF THE TOWN OF LONGBOAT KEY, AS AMENDED BY ORDINANCE NO. 74-15, AS AMENDED BY ORDINANCE NO. 76-26, AS AMENDED BY ORDINANCE NO. 77-10, AS AMENDED BY ORDINANCE NO. 78-1, AS AMENDED BY ORDINANCE NO. 78-19, AS AMENDED BY ORDINANCE NO. 79-7; INCLUDING PROVISIONS REQUIRING CONVEYANCE OF LAND FOR PARKS, OPEN SPACE AND OTHER TOWN PURPOSES, INCLUDING PURPOSE, DEFINITIONS, REQUIREMENTS, GENERAL STANDARDS, FORMULA FOR CONVEYANCE OF LAND, FORMULA FOR FEES IN LIEU OF CONVEYANCE OF LAND; PROVISIONS FOR THE USE OF FEES, CRITERIA FOR CONVEYANCE AND FEES IN LIEU OF CONVEYANCE; PROVISIONS TO DETERMINE THE AMOUNT OF FEE IN LIEU OF LAND CONVEYANCE; CREDIT FOR PRIVATE OPEN SPACE; PROCEDURE FOR APPROVAL; PROVIDING FOR SEVERABILITY OF PROVISIONS; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town of Longboat Key has adopted a comprehensive plan, "The Town of Longboat Key 1978 Comprehensive Plan," and addendum, together with Natural Resources, Conservation and Coastal Zone Protection Elements, and a cpaital [sic] improvement program; and the Town of Longboat Key in implementation of portions of said comprehensive plan deems it necessary to enact this Ordinance and adopt a map entitled, "Open Space Master Plan";

WHEREAS, Chapter 166, Florida Statutes, empowers the Town of Longboat Key to enact a Zoning Ordinance and to provide for its administration, enforcement and amendment;

WHEREAS, the Town Commission deems it necessary, for the purpose of promoting the health, safety, morals, or general welfare of the Town to enact such amendments to the Zoning Ordinance of the Town of Longboat Key;

WHEREAS, the Planning and Zoning Board has made a preliminary report and held public hearings thereon and submitted its report to the Town Commission;

WHEREAS, the Town Commission has given due public notice of hearings and held such public hearings and considered, among other things, the availability of water and sewer services, traffic and traffic control, fire and police protection; and

WHEREAS, all the requirements of Chapter 166, Florida Statutes and Appendix B of the Code of the Town of Longboat Key, as amended, have been met; now, therefore,

BE IT ORDAINED BY THE TOWN OF LONGBOAT KEY:

Section 1. The map entitled "Open Space Master Plan" attached hereto is made a part of this Ordinance and hereby adopted. Said map properly attested shall be on file in the office of the Town Clerk inventorying land recommended for acquisition by the Town.

Section 2. Section 1 of Ordinance 79-7 is amended to read:

A. Purpose. This ordinance is enacted to ensure that future land development within the Town of Longboat Key preserves or provides land in its natural state for parks, open space and land for specified Town purposes required by the Longboat Key 1978 Comprehensive Plan, including Section 3 thereof entitled "Open Space and Recreation Element" and in the Capital Improvement Program of that Plan and are more particularly set forth in the "Open Space Master Plan" concurrently adopted with this Ordinance by the Town of Longboat Key.

B. Developers must provide for parks, open space and land for specified Town purposes:

1. Scope. The scope of this Ordinance is further to set forth certain regulations pertaining to land development within the Town, providing for parks, open space and land for specified Town purposes, which regulations shall be in addition to all other applicable building, subdivision, zoning and other regulations established by the Town or-

dinances. This Ordinance shall apply to and be enforced in all areas of the Town, and no persons shall develop land anywhere in the Town except in conformity with this Ordinance and other applicable regulations of the Code of Ordinances and amendments thereto.

2. Definitions for the purpose of this Ordinance.

(a) "Developer" shall mean any person, partnership or corporation undertaking any development as defined in this section.

(b) "Development" shall mean any subdivision, whether or not the recording of a plat is required; any land on which a multiple family dwelling unit residential building or grouping of such buildings or villas is to be built including but not limited to rental cooperative or condominium units and including land to be used for hotels and motels or individual dwelling. The term "Development" shall include any planned unit development or district which has received Outline Development Plan approval prior to the effective date of this ordinance, but has not received final (development) approval, where the amount of open space land in excess of open space land required by the Town building and zoning codes and regulations has not been (i) dedicated or deeded to the Town of Longboat Key; or (ii) is not part of the common land or elements or private land belonging to and owned by the unit owners or members of an association residing in such development. Such excess land shall be dealt with as "private land" under paragraph B. 10. of this section of this Ordinance.

3. Requirements. As a condition precedent to the grant of any permits following approval of final development plans, site plans or subdivision plats, the developer shall deed land to the Town of Longboat Key, pay a money fee in lieu thereof or provide a combination of the above at the option of the Town Commission, to be used for parks, open space and Town purposes specified in this Ordinance and according to the standards and formula set forth in this Ordinance.

4. General Standard; Formula.

(a) It is hereby found and determined that the public interest, convenience, health, welfare and safety require that two and one-half (2-1/2) acres of land or equivalent money value be deeded or paid to the Town for each one thousand (1000) persons residing in the Town to be

devoted for said park and open space purposes of this Ordinance and that two and one-half (2-1/2) acres of land or equivalent money value be deeded or paid to the Town for each one thousand (1000) persons residing in the Town to be devoted for said other purposes of this Ordinance, with the resulting cumulative standard of five (5.0) acres of land for each one thousand (1000) persons residing in the Town or equivalent money value as determined by the Town Commission as a standard to determine land to be conveyed.

(b) Formula for conveyance of land. To determine the amount of land for open space and specified Town purposes to be dedicated in accordance with the general standard of five (5.0) cumulative acres per one thousand (1000) persons, the following shall be used:

Average number of persons per dwelling unit divided by (1000 population, divided by acres of land required) equals acreage requirement per dwelling unit.

Example for single dwelling unit:

2.01 divided by 1000/5 + [sic] .010 acres per dwelling unit

(c) The following basis is to be followed in determining the amount of land to be included:

Dwelling type	Acreage Requirement/D.U.
Single Family	.01
Duplex	.01
Multi-family	.01

(d) For land zoned multifamily, the land dedication basis shall be applied to the number of dwelling units included in the final development plan.

(e) The land to be dedicated or conveyed to the Town may be located either within or outside of the boundaries of the property proposed for development.

5. Formula for Fees in lieu of land conveyance.

(a) If it is determined that the proposed development does not include any land designated by the Open Space Master Plan as open space or land for specified Town purposes, to serve the immediate and future needs of the Town residents and the developer is unwilling or unable to deed to the Town lands outside the proposed development that

are so designated, then the developer shall, in lieu of dedicating land, pay a fee to the Town equal to the value of the land acreage that would otherwise have been required to be conveyed as determined by the formula herein, and in an amount determined in accordance with the provisions set out below, such fee to be used by the Town for acquisition of land for parks, open space and specified town purposes which is intended to exclusively serve the residents of the Town of Longboat Key.

(b) The provisions of this subsection shall automatically apply to all developments of twenty-five (25) dwelling units or less.

6. Use of Fees. The fees collected hereunder shall be paid to the Town of Longobat Key at Town Hall, 501 Bay Isles Road, Longboat Key, Florida. All such fees shall be placed in a reserve account within the General Fund which shall be known as the Reserve for Lands for parks, open space and specified town facilities required as capital improvements. Monies within the Reserve Account shall be used and expended solely for the acquisition, improvement, expansion of Town Parks, open space land and land for specified Town purposes and facilities required as capital improvements of the Town of Longboat Key.

7. Criteria for Requiring Both Conveyance and Fee. In any development of over twenty-five (25) dwelling units, the developer may be required to convey land and pay a fee in accordance with the following formula:

(a) When only a portion of the land which the developer is required to convey for parks, open space and specified Town purposes is to be conveyed, such portion shall be conveyed for local open space or specified Town purposes and a fee computed pursuant to the provisions set out herein shall be paid to the Town for any additional land that the developer would otherwise have been required to convey hereunder.

(b) When most of the land designated as parks, open space and land for specified Town purposes in the vicinity of the proposed development has already been acquired by the Town and only a small remaining portion of the land in the proposed development is needed to complete the site, such remaining portion shall be conveyed by the developer and a fee shall be paid by the developer in lieu of conveying

the additional land which would otherwise have been required to be conveyed, such fees to be in an amount equal to the value of the additional land which the developer would otherwise be required to convey and such fees to be used for the improvement of the existing Town parks, open space land and land specified for Town purposes or for the improvement of other Town parks, open space land and land for specified Town purposes in the area serving the development.

8. If the developer objects to the fair market value determination, he may submit an MAI appraisal showing the fair market value of the lands required to be donated and final determination of said market value per acre of such land shall be made by the Town Commision based upon such information submitted by the developer. Should the developer's MAI appraisal not be acceptable to the Town, the Town shall appoint another MAI apraiser. The Town's MAI appraiser and the developer's MAI appraiser shall select a third MAI appraiser and the fair market value of the lands required to be conveyed, as determined by the three appraisers, shall be binding upon the developer and the Town. The cost of any appraisal shall be a credit against any fees.

9. Determination of Land or Fee. The Town Commission shall determine whether to accept land or require payment of the fee in lieu thereof, after consideration of the following:

(a) Topography, geology, access and location of land in the development available for dedication;

(b) Size and shape of the development and land available.

(c) The feasibility of conveyance;

(d) Availability of previously acquired parks, open space property and land for specified Town purposes;

(e) Whether the developer owns or controls other land designated in the "Open Space Master Plan" or other lands.

10. Credit for Private Open Space. Where private open space is provided in a proposed or existing planned unit development or district and such space is to be privately owned and maintained by the future residents of the development, partial credit, not to exceed fifty percent (50%) of the amount of land required to be conveyed, may be given against the requirements of land to be conveyed or payment of fees in

lieu thereof if the Town Commission finds it is in the public interest to do so. Private open space is that open space which is set aside for the common enjoyment of the residents of the project, and does not include required yards, parking, court areas, setbacks, and other open areas required by zoning and building ordinances.

11. Procedure.

(a) In the case of a subdivision for which a plat is required to be recorded, as a condition of preliminary plat approval the developer shall agree in writing to convey land for parks, open space and land for specified Town purposes, pay a fee in lieu thereof, or both, at the option of the Town Commission at the time and according to the standards and formula in this Ordinance after a recommendation from the Town Manager and approved by the Town Commission at the time of approval of the subdivision preliminary plat. At the time of approval of the final subdivision plat, the developer shall convey the land and pay the fees as previously determined by the Town Commission.

(b) In the case of a subdivision for which a plat is required to be recorded, as a condition of preliminary plat approval, the developer shall agree in writing to convey land for parks, open space and land for specified Town purposes, pay a fee in lieu thereof, or both, at the option of the Town Commission at the time and according to the standards and formula in this Ordinance after a recommendation from the Town Manager and approved by the Town Commission at the time of approval of the subdivision preliminary plat. At the time of approval of the final subdivision plat, the developer shall convey the land and pay the fees as previously determined by the Town Commission;

(c) In the case of a subdivision for which a plat is not required to be recorded, or in the case of any development other than a subdivision, at the time of final approval of this final development plan or site plan, or on application for a building permit, the developer shall convey land, pay a fee in lieu thereof, or both, at the option of the Town as determined by the Town Commission in accordance with this Ordinance.

Section 3. If any section, subsection, sentence, clause, or provision of this Ordinance is held invalid, the remainder of the Or-

dinance shall not be affected.

Section 4. All ordinances and parts of ordinances in conflict herewith shall be and the same are hereby repealed.

Section 5. This Ordinance shall take effect upon second reading in accordance with law, and the Charter of the Town of Longobat Key.

Passed on first reading this 19th day of March, 1980.

Passed and adopted finally on second reading this 2nd day of April, 1980.

/s/ J. Kennedy McCall
Mayor

Attest:
/s/ E. Jane Pool
Town Clerk

ORDINANCE NO. 81-27

AN ORDINANCE AMENDING APPENDIX B, ZONING OF THE CODE OF THE TOWN OF LONGOBAT KEY, AS AMENDED BY ORDINANCE NO. 74-15, AS AMENDED BY ORDINANCE NO. 76-26, AS AMENDED BY ORDINANCE NO. 77-10, AS AMENDED BY ORDINANCE NO. 78-1, AS AMENDED BY ORDINANCE NO. 78-19, AS AMENDED BY ORDINANCE NO. 79-7, AS AMENDED BY ORDINANCE NO. 80-1, AS AMENDED BY ORDINANCE NO. 80-3, AS AMENDED BY ORDINANCE NO. 80-8, AS AMENDED BY ORDINANCE NO. 80-9, AS AMENDED BY ORDINANCE NO. 81-1, AS AMENDED BY ORDINANCE NO. 81-18; PROVIDING FOR AN AMENDMENT TO ORDINANCE NO. 79-7, AS AMENDED BY ORDINANCE NO. 80-1 and ORDINANCE NO. 80-9 OPEN SPACE REQUIREMENTS; PROVIDING FOR SEVERABILITY OF PROVISIONS; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH AND PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE TOWN OF LONGBOAT KEY:

Section 1. Section 1 of Ordinance 79-7, as amended by Section 2 of Ordinance No. 80-1, as amended by Section 1 of Ordinance No. 80-9, is amended to read:

A. Purpose: This ordinance is enacted to ensure that future land development within the Town of Longboat Key preserves or provides land in its natural state for parks and open space required by the Longboat Key 1978 Comprehensive Plan, including Section 3 thereof entitled "Open Space and Recreation Element" and in the Capital Improvement Program of that Plan and are more particularly set forth in the "Open Space Master Plan" concurrently adopted with Ordinance

No. 80-1 of the Town of Longboat Key.

B. Developers and landowners, including builders of residences on single family lots, must provide for parks and open space.

1. Scope. The scope of this Ordinance is further to set forth certain regulations pertaining to land development and construction within the Town, providing for parks and open space, which regulations shall be in addition to all other applicable building, subdivision, zoning and other regulations established by the Town ordinances. This ordinance shall apply to and be enforced in all areas of the Town, and no persons shall develop land, nor construct any single family residence, anywhere in the Town except in conformity with this ordinance, and other applicable regulations of the Code of Ordinances and amendments thereto.

2. Definitions for the purpose of this ordinance.

(a) "Developer" shall mean any person, partnership, corporation, or trustee, undertaking any development as defined in this section.

(b) "Development" shall mean any subdivision, whether or not the recording of a plat is required; any land on which a multiple family dwelling unit, residential building or grouping of such buildings or villas is to be built, including but not limited to rental cooperative or condominium units and including land to be used for commercial condominiums, hotels and motels or individual dwellings, the latter including the construction of a single family residence on single family lot or lots.

The term "Development" shall include any planned unit development or district and gulf planned unit development or district, or part thereof.

3. Requirements. As a condition precedent to the grant of any permits following approval of final development plans, site plans, subdivision plats, or issuance of a building permit, the developer shall deed land to the Town of Longboat Key, pay a money fee in lieu thereof or provide a combination of the above, at the option of the Town Commission, to be used for parks and open space specified in this Ordinance and according to the standards and formula set forth in this Ordinance.

4. General Standard; Formula.

(a) It is hereby found and determined that the public interest, convenience, health, welfare and safety require that five (5) acres of land or equivalent money value be deeded or paid to the Town for each one thousand (1,000) persons residing in the Town to be devoted for said park and open space purposes of this ordinance.

(b) Formula for conveyance of land. To determine the amount of land for parks and open space to be conveyed in accordance with the general standard of five (5) cumulative acres per one thousand (1,000) persons, the following shall be used:

Average number of persons per dwelling unit divided by (1,000) population, divided by acres of land required, equals acreage requirement per dwelling unit.

Example for single dwelling unit:

2.01 divided by 1,000/5 = .010 acre per dwelling unit

(c) The following basis is to be followed in determining the amount of land to be included:

Dwelling type	Acreage Requirement/D.U.
Single Family	.01
Duplex	.01
Multi-family	.01

(d) For land zoned multifamily, the land dedication basis shall be applied to the number of dwelling units included in the final development plan.

(e) The land to be conveyed to the Town may be located either within or outside of the boundaries of the property proposed for development.

5. Formula for Fees in lieu of land conveyance.

(a) If it is determined that the proposed development does not include any land designated by the Open Space Master Plan as open space, to serve the immediate and future needs of the Town residents and the developer is unwilling or unable to deed to the Town lands outside the proposed development that are so designated, then the developer shall, in lieu of conveying land, pay a fee to the Town equal to the value of the land acreage that would otherwise have been required

to be conveyed as determined by the formula herein, and in an amount determined in accordance with the provisions set out below, such fee to be used by the Town for acquisition of land and parks and open space which is intended to exclusively serve the residents of the Town of Longboat Key.

(b) The provisions of this subsection shall automatically apply to all developments of twenty-five (25) dwelling units or less.

6. Use of Fees. The fees collected hereunder shall be paid to the Town of Longboat Key at Town Hall, 501 Bay Isles Road, Longboat Key, Florida. All such fees shall be placed in a reserve account in trust within the General Fund and shall be known as the Reserve for Lands for parks and open space. Monies within the Reserve Account shall be used and expended solely for the acquisition, improvement, expansion of Town Parks and open space land.

7. Criteria for Requiring Both Conveyance and Fee. In any development of over twenty-five (25) dwelling units, the developer may be required to convey land and pay a fee in accordance with the following formula:

(a) When only a portion of the land which the developer is required to convey for parks and open space is to be conveyed, such portion shall be conveyed for parks or local open space and a fee computed pursuant to the provisions set out herein shall be paid to the Town for any additional land that the developer would otherwise have been required to convey hereunder.

(b) When most of the land designated as parks and open space in the vicinity of the proposed development has already been acquired by the Town and only a small remaining portion of the land in the proposed development is needed to complete the site, such remaining portion shall be conveyed by the developer and a fee shall be paid by the developer in lieu of conveying the additional land which would otherwise have been required to be conveyed, such fees to be in an amount equal to the value of the additional land which the developer would otherwise be required to convey and such fees to be used for the improvement of the existing Town parks and open space land or for the improvement of other Town parks and open space land in the area ser-

8. If the developer objects to the fair market value determination, he may submit an MAI appraisal showing the fair market value of the lands required to be donated and final determination of said market value per acre of such land shall be made by the Town Commission based upon such information submitted by the developer. Should the developer's MAI appraisal not be acceptable to the Town, the Town shall appoint another MAI appraiser. The Town's MAI appraiser and the developer's MAI appraiser shall select a third MAI appraiser and the fair market value of the lands required to be conveyed, as determined by the three appraisers, shall be binding upon the developer and the Town. The cost of an appraisal shall be a credit against any fees.

9. Determination of Land or Fee. The Town Commission shall determine whether to accept land or require payment of the fee in lieu thereof, after consideration of the following:

(a) Topography, geology, access and location of land in the development available for dedication;

(b) Size and shape of the development and land available.

(c) The feasibility of conveyance;

(d) Availability of previously acquired parks and open space property.

(e) Whether the developer owns or controls other land designated in the "Open Space Master Plan" or other lands.

10. Credit for Private or Public Open Space. Where private or public open space is provided in a proposed or existing planned unit development or district in excess of the then requirement of Section 7.52, or any amendment thereof, of the zoning code, partial credit, not to exceed fifty percent (50%) of the amount of land required to be conveyed may be given against the requirements of land to be conveyed or payment of fees in lieu thereof if the Town Commission finds it is in the public interest to do so. Such space does not include required yards, parking, court areas, setbacks, and other open areas required by zoning and building ordinances.

11. Procedure.

(a) In the case of a subdivision for which a plat is required to be recorded, as a condition of preliminary plat approval, the developer

shall agree in writing to convey land for parks and open space, pay a fee in lieu thereof, or both, at the option of the Town Commission at the time and according to the standards and formula in this ordinance after a recommendation from the Town Manager and approved by the Town Commission at the time of approval of the subdivision preliminary plat. At the time of approval of the final subdivision plat, the developer shall convey the land and pay the fees as previously determined by the Town Commission, but not later than issuance of a building permit.

(b) In the case of a planned unit development for which a condominium plat is required to be recorded, as a condition of site approval, the developer shall convey land for parks and open space, pay a fee in lieu thereof, or both, at the option of the Town Commission and according to the standards and formula in this ordinance after a recommendation from the Town Manager and approved by the Town Commission at the time of approval of the site plan, but not later than issuance of a building permit.

(c) In all other cases, at the time of final approval of the final development plan or site plan, or on application for a building permit, the developer shall convey land, pay a fee in lieu thereof, or both, at the option of the Town as determined by the Town Commission in accordance with this Ordinance.

Section 2. If any section, subsection, sentence, clause, or provision of this ordinance is held invalid, the remainder of the ordinance shall not be affected.

Section 3. All ordinances and parts of ordinances in conflict herewith shall be and the same are hereby repealed.

Section 4. This ordinance shall take effect upon second reading in accordance with law and the Charter of the Town of Longboat Key.

Passed on first reading this 2nd day of September, 1981.

Passed and adopted finally on second reading this 16th day of September, 1981.

/s/ Claire C. Bell
Mayor

Attest:
/s/ E. Jane Pool
Town Clerk